



THE CITY OF SAN DIEGO

September 28, 2006

Mark Krause, Executive Director
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Request for Opinion

Dear Mr. Krause:

I am the Executive Director of the City of San Diego Ethics Commission, and I am requesting that the Fair Political Practices Commission issue an opinion pursuant to Government Code section 83114(a) regarding payments made by political parties for member communications. In particular, please see the questions set forth in the attached Request for Advice which was sent to the Commission on June 22, 2006. I recently received the attached withdrawal notice from William Lenkeit, Senior Counsel in the Commission's Legal Division, indicating that I should resubmit my request in the form of a Request for Opinion because the request requires a policy interpretation.

Please feel free to contact me at (619) 533-3476 if you have any questions or need any additional information.

Sincerely,



Stacey Fullhorst
Executive Director

SF/s

Enclosures

cc (w/encl): Liane Randolph, Chair, Fair Political Practices Commission
Luisa Menchaca, General Counsel, Fair Political Practices Commission
Chuck Bell, Bell McAndrews & Hiltachk
Lance Olson, Olson Hagel & Fishburn LLP
Pamela Wilson, Wertz McDade Wallace Moot & Brower
April Boling, Treasurer, San Diego County Republican Central Committee
Xavier Martinez, Treasurer, San Diego County Democratic Party



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 Fax (619) 533-3448



RECEIVED
FAIR POLITICAL
PRACTICES COMMISSION

THE CITY OF SAN DIEGO 2006 OCT -2 AM 8:49

June 22, 2006

Luisa Menchaca, General Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Request for Written Advice

Dear Ms. Menchaca:

I am the Executive Director of the City of San Diego Ethics Commission, and I am requesting written advice pursuant to Government Code section 83114(b) regarding payments made by political parties for member communications. As you know, in October of 2002 the FPPC adopted Regulation 18531.7 concerning payments made for member communications by organizations other than political parties. This regulation includes several valuable guidelines governing the conduct of parties that engage in campaign-related communications with their members. In particular, this regulation generally provides that:

- a payment for a communication inadvertently sent to non-members shall not be considered a contribution or an expenditure provided that the associated costs do not exceed \$100 or five percent of the total cost of the communication;
- a payment for a member communication shall be regarded as a contribution or an expenditure if it is paid for by a person other than the organization or its members, or paid from funds received by the organization from a person other than the organization's members that are earmarked for the communication; and
- a payment made for a member communication is not a contribution to the candidate supported even if it is made at the behest of the candidate.

The FPPC has issued an advisory opinion confirming that Regulation 18531.7 does not apply to political parties. *In re Hiltachk*, FPPC Adv. Ltr. A-02-233. Moreover, California Government Code section 85312 does not provide detailed guidance on the particular circumstances surrounding member communications, and the FPPC has not adopted any regulations that address member communications by political parties. Accordingly, I am seeking advice



Ethics Commission

1010 Second Avenue, Suite 1530 • San Diego, CA 92101
Tel (619) 533-3476 Fax (619) 533-3448

regarding the rules and regulations that apply to political parties that make payments for member communications that support or oppose City of San Diego candidates or ballot measures. In particular, my questions are as follows:

If a political party makes a payment for a member communication and the communication is inadvertently delivered to one or more non-members, is that payment considered a contribution or expenditure?

- (2) In the context of question number one, is it relevant how many non-members receive the communication, or how much of the costs of the communication are attributable to non-members?

If a political party makes a payment for a member communication using funds from an individual who is not registered with that party, is that payment considered a contribution or expenditure?

- (4) If a political party makes a payment for a member communication using funds from a business entity or organization (which as a non-individual is incapable of registering to be a member of a political party), is that payment considered a contribution or expenditure?
- (5) If an individual who is not registered with a political party makes a non-monetary donation in support of a member communication by that political party, is the non-monetary donation considered a contribution or expenditure?
- (6) If a business entity or organization (which as a non-individual is incapable of registering to be a member of a political party) makes a non-monetary donation in support of a member communication by that political party, is that non-monetary donation considered a contribution or expenditure?
- (7) If an individual who is a member of a political party makes a payment directly to a vendor for services rendered in connection with the political party's member communication, is that payment considered a contribution or expenditure?
- (8) If a political party makes a payment for a member communication at the behest of a candidate, is that payment considered a contribution to the candidate?
- (9) If a candidate tells his or her supporters to make payments directly to a political party and to earmark those payments for member communications supporting the candidate, are such payments considered contributions to the candidate?
- (10) May a local jurisdiction enact a law defining as a "contribution" any payment for member communications that are made at the behest of a candidate, and subjecting such payments to local contribution limits?

Luisa Menchaca, General Counsel
June 22, 2006
Page 3

Please feel free to contact me at (619) 533-3476 if you have any questions or need any additional information.

Sincerely,



Stacey Fulhorst
Executive Director

SF/s

cc: Liane Randolph, Chair, Fair Political Practices Commission